



Feasibility of a Non-Commercial Marine Fishing Registry, Permit, or License System in Hawai'i

Executive Summary
December 2016

I. EXECUTIVE SUMMARY

Hawai'i's fisheries are indispensable to the State's environment, economy, food security, and culture. Hawai'i's fisheries require well-informed management with an adequate capacity to ensure that the resources exist for future generations. The Hawai'i State Legislature has periodically examined what a non-commercial marine fishing license may be able to offer to address these needs. Hawai'i remains, however, the only coastal U.S. state without a mandatory non-commercial marine fishing registry, permit, or license ("RPL") system, because these previous attempts to enact an RPL system have been unsuccessful.

To better understand the issues relevant to an RPL system, Conservation International Hawai'i (CI Hawai'i) and the Western Pacific Regional Fishery Management Council ("Council") invited individuals from different fishing organizations and interest groups to serve as members of a Study Group to undertake a fresh examination of the RPL system issues. These individuals have diverse knowledge and experience and worked together over much of 2016 to gather and analyze information to better understand the implications of any prospective RPL system.

The Study Group focused on evaluating any potential RPL system based on its ability to meet three primary objectives: (1) provide additional and more robust data to support fishery management; (2) foster two-way dialogue between fishers and managers by identifying the universe of non-commercial fishers in Hawai'i and developing approved communication pathways; and (3) create a source of independent, continuous funding to support effective fisheries management. The Study Group examined several RPL system options, including those enacted by other states, that might meet the above-stated objectives and sought to analyze the respective advantages and disadvantages of each. The group also reviewed the results of legal and financial analyses of some or all of these RPL system options, interviewed fisheries managers in other coastal states, and focused outreach efforts on certain unique stakeholders and rights-holders.



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The Study Group did not identify a preferred alternative, however, the Study Group concluded that there are no legal or constitutional barriers in Hawai'i that would prohibit the implementation of a new RPL system, and that it is possible, subject to further consultation regarding implementation, to design a system that does not violate the Native Hawaiian traditional and customary rights protected under Hawai'i law. The Study Group further concluded that only some form of fee-based license or permit system would address all three primary objectives, and that it would be possible for such a system to be designed in a way that would generate additional net revenue for fisheries management using a fee structure not unlike Hawai'i's existing freshwater fishing and game mammal hunting licenses fees.

There are a number of RPL system design and implementation options available to allow different categories of fishers, fishing activities, and other factors to be handled in distinct ways, if necessary. For example, it is common in other states to grant RPL system fee waivers for children, seniors, and in some cases, very low-income individuals. Additionally, there may be special design and implementation considerations to address Native Hawaiian traditional and customary rights. This report identifies and discusses these options.

The Study Group takes no collective position on whether an RPL system should be implemented at this time, or if a specific RPL system option is preferred over others. However, if the State chooses to develop an RPL system, the group recommends that the following issues be carefully considered. (Further elaboration of these are included in Section XII of this report).

A. OUTREACH

- Undertake extensive outreach, consultation, and discussions with affected stakeholders statewide prior to and as part of the decision-making process.
- As part of any outreach effort, ensure that this study is available to the public in general and to fishing stakeholders in particular.

B. ADDITIONAL RESEARCH AND INFORMATION GATHERING

- Clarify the definition of the term ‘non-commercial fishing’, and better understand the demographics of the population segments that are active in non-commercial fishing.
- Consult non-commercial Native Hawaiian fishing practitioners to identify practices that are a part of traditional subsistence, cultural, ceremonial, or religious activities.
- Consult with charter fishing industry representatives to identify RPL elements that would work easily for charter patrons and businesses, and consider ways to use RPL fees collected through charter operations to improve State infrastructure used by this industry.
- Continue to collect additional information from other states on their lessons learned.
- Carefully consider and conduct further analysis on the financial implications of prospective fee-waivers or exemptions from any new RPL system.
- Consider ways to align any RPL system with complementary data collection efforts that improve management of near-shore waters.
- Ensure that the State has specific plans for how data will be collected, used, and shared before data collection efforts begin. Conduct further research into any confidentiality and data protection issues that may apply.



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C. FUNDS

- Ensure that any and all funds collected from any form of RPL system are protected and dedicated to managing marine fisheries.
- Ensure that any funds derived from a fee-based RPL system are additive to the Division of Aquatic Resources' (DAR's) budget and do not replace General Funds and/or other funds.

D. ADVISORY BOARD

- Establish a formal advisory board to help DAR improve communication and information exchange with non-commercial fishers.
- Ensure adequate representation from different segments of the fishing communities, both geographically and by type of fishing.
- Define and publicize lists of any special gear, restricted areas, or individual species if considering charging permit fees for using special gear, fishing in restricted areas, or fishing for specific species.
- If any RPL system is enacted, require that DAR provide annual reports. The annual reports should be provided to any advisory board prior to being released to the public. The annual reports should address the data collected and how it was used to support fisheries management. The report should also include the amount collected from fees (if applicable), and how they were spent to support fisheries management. If a portion of the fees are provided to DOCARE for aquatics enforcement, the report should also describe how those enforcement funds were spent. If data is collected, the report should summarize the preliminary data and include the refined findings when they are analyzed. At minimum, the report should summarize how fishermen benefit from the RPL program.

E. NATIVE HAWAIIAN RIGHTS

- Undertake focused outreach and consultation with the Native Hawaiian community to determine how best to reach Native Hawaiian fishers and fisher groups, particularly in communities where fishing is important to subsistence and cultural practice. Address concerns that traditional and customary fishing practices could be adversely affected by an RPL system or that exercising them could be construed as criminalized by a new RPL system. Solicit Native Hawaiian views and opinions or analyses from recognized experts on acceptable approaches for avoiding these perceptions.
- Develop systems, trainings and policies to avoid criminalization of native Hawaiian practitioners.
- If a permit system is implemented, provide a mechanism for Native Hawaiian non-commercial fishing practitioners to identify their traditional fishing area(s), types of gear, restricted areas or seasons, and specific species that are part of their traditional subsistence, cultural, ceremonial, or religious practices.

F. ENFORCEMENT

- Provide information and training for DOCARE and other law enforcement personnel about changes to the law under any new RPL system. Enlist their assistance with specific outreach and community education, including for Native Hawaiian-related issues and concerns.
- Increase the presence of community-based DOCARE officers simultaneous with implementing any new RPL system. Ensure that they know and understand the communities of non-commercial fishers in the areas to which they are assigned.
- Recognize that any RPL system provisions regarding DOCARE's right to inspect personal coolers may be particularly sensitive to certain fishers. Clarify under what terms and conditions such inspections may be warranted.

G. OTHER

- Research other possible mechanisms for producing additional information and data to support informed decision-making in non-commercial fishing management.
- Consider ways to combine any new RPL system with other existing DAR fishing license programs, such as a combined non-commercial saltwater and freshwater system. Strive for simplicity for the users.
- If a fee-based license or permit is pursued, look into the advantages and disadvantages of creating different tiers of licenses (e.g., levels or categories, such as a single boat license that can cover several non-commercial fishers on the same boat).